

## § 10.21

## 35 CFR Ch. I (7–1–00 Edition)

Privacy Act or the regulations in this part.

### § 10.21 General exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(j)(2) because each system is maintained by a component of the agency, or subcomponent, which performs as its principal function the enforcement of criminal laws, and which contains investigatory material compiled for criminal law enforcement purposes. Accordingly, these systems are exempt from the following sections of 552a of 5 U.S.C.: (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e) (5); (e)(8); (f); (g); and (h).

(1) PCC/GSCP-2, Canal Protection Division Incident Report Files;

(2) PCC/OIG-1, Investigative Files of the Office of Inspector General;

(3) PCC/OIG-2, Allegation/Complaint Files of the Office of Inspector General;

(4) PCC/OIG-3, Cash Audit Files.

(b) The systems of records listed below, although no longer actively in use, continue to be subject to general exemption pursuant to 5 U.S.C. 552a(j)(2) because they were compiled by a component, or subcomponent, of the agency which performed as its principal function the enforcement of criminal laws, and which contain investigatory material compiled for criminal law enforcement purposes. Accordingly, the following systems of records are exempt from subsections (c)(3) and (4); (d); (e)(1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); (g); and (h) of 5 U.S.C. 552a:

(1) PCC/AEPR-1, Probation and Parole Unit Child Custody Reports;

(2) PCC/AEPR-2, Presentence and Preparole Investigation Reports;

(3) PCC/AEPR-3, Probation and Parole Unit Statistical File;

(4) PCC/GSPL-1, Law Enforcement Case Report File;

(5) PCC/GSPL-2, Police Headquarters Confidential File;

(6) PCC/GSPL-3, Detective Confidential Files;

(7) PCC/GSPL-4, Convict Files;

(8) PCC/GSPL-6, Police Photo Files;

(9) PCC/GSPL-7, Fingerprint File;

(10) PCC/GSPL-10, Master Name File;

(c) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses and other evasive action that could impede or compromise the investigation.

(2) From (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) From subsection (d) because access to the records contained in these systems would inform the subject of a criminal or civil investigation, matter or case of the existence of such, and provide the subject with information that might enable him or her to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies. Amendment of the records would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, information may be obtained concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, information should be retained because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

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(5) From subsection (e)(2) because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3) because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, or permit the subject to evade apprehension.

(7) From (e)(4) (G) and (H); (f); (g); and (h) because these provisions concern an individual's access to records which concern him and such access to records in this system would compromise investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of information necessary for effective law enforcement.

(9) From subsection (e)(8) because the application of this provision could prematurely reveal an ongoing criminal investigation to the subject of the in-

vestigation and could reveal investigative techniques, procedures or evidence.

[59 FR 9089, Feb. 25, 1994]

### § 10.22 Specific exemptions.

(a) The following systems of records are eligible for exemption under 5 U.S.C. 552a(k)(2) because they contain investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of 5 U.S.C. 552a. Provided, however, that if any individual is denied any right, privilege or benefit that he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Accordingly, the following systems of records are exempt from (c)(3); (d); (e)(1); (e)(4) (G) and (H); (f); (g); and (h) of 5 U.S.C. 552a.

- (1) PCC/GSCP-2, Canal Protection Division Incident Report Files;
- (2) PCC/OIG-1, Investigative Files of the Office of Inspector General;
- (3) PCC/OIG-2, Allegation/Complaint Files of the Office of Inspector General;
- (4) PCC/OIG-3, Cash Audit Files.
- (5) PCC/FMAC-1, Embezzlements, Burglaries, and Cash Shortages;
- (6) PCC/EO-2, Equal Employment Opportunity Complaint File;
- (7) PCC/GCCL-1, Marine Accident/Miscellaneous General Claims Files;
- (8) PCC/GSCS-2, Housing Complaints Files;
- (9) PCC/GSCX-1, Administrative Reports, Transfer of Custody and Official Complaint Files.
- (10) PCC/AEPR-1, Probation and Parole Unit Child Custody Reports;
- (11) PCC/AEPR-2, Presentence and Preparole Investigation Reports;
- (12) PCC/AEPR-3, Probation and Parole Unit Statistical File;
- (13) PCC/CAPS-2, Case Investigations;
- (14) PCC/GSPL-1, Law Enforcement Case Report Files;